

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH ANTWAIN TIMMONS,

Defendant-Appellant.

UNPUBLISHED

March 29, 2002

No. 228147

Oakland Circuit Court

LC No. 99-164373-FH

Before: Hood, P.J., and Gage and Murray, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), and possession with intent deliver marijuana, MCL 333.7401(2)(d)(iii). He was sentenced as a repeat drug offender, MCL 333.7413(2), to lifetime probation for the possession with intent to deliver cocaine conviction and two years' probation for the possession with intent to deliver marijuana conviction, with one year to be served in jail for each probationary term. He appeals as of right and we affirm.

Defendant first argues that the trial court erred in denying his motion to suppress evidence. Defendant argued to the trial court that the evidence was illegally seized during an unlawful arrest, but the trial court disagreed on the basis that the search was incident to a lawful arrest. This Court reviews a trial court's findings of fact regarding a motion to suppress for clear error. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). However, we review the trial court's ultimate decision regarding a motion to suppress de novo. *Id.*

We find no clear error in the trial court's determination that defendant was lawfully arrested for loitering, and therefore, that the contraband was properly seized during a search incident to that arrest. A search incident to a lawful arrest is a reasonable search under the Fourth Amendment and requires no additional justification. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996); *People v Catanzarite*, 211 Mich App 573, 580-581; 536 NW2d 570 (1995). A custodial arrest of a suspect is lawful when based on probable cause to believe that an offense has occurred and that it has been committed by the defendant. "Probable cause to arrest exists where the facts and circumstances within an officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Champion, supra*.

Defendant contends that there was no probable cause to arrest him for loitering. Section 86-141(a) of Pontiac's loitering ordinance provides that "[n]o person shall knowingly loiter, loaf, wander or remain, either along and/or in concert with others in a place of illegal occupation, business or activity." Thus, to arrest defendant for loitering under the ordinance there must have been probable cause to believe that defendant knew that he was loitering in a place of illegal activity. See *Detroit v Hodges*, 13 Mich App 531, 534; 164 NW2d 781 (1968).

In this case, there was evidence that immediately before he was arrested defendant had, for thirty minutes, remained in an area described as a well-known drug area, and where an apparent drug transaction had just openly taken place on the street across from the location where defendant was observed loitering. Defendant had recently been arrested in that area for a drug offense. Furthermore, defendant was sitting in his car when a van briefly pulled up to it, which indicated that a possible drug transaction was taking place. All of this evidence supported the police officer's reasonable belief that defendant knew he was loitering in an area where drug trafficking took place. Accordingly, defendant was lawfully arrested for loitering, and therefore, the evidence was properly seized pursuant to the search incident to that arrest.

Next, defendant argues that there was insufficient evidence presented that he intended to deliver the cocaine and marijuana to support his convictions. We disagree. When reviewing a challenge to the sufficiency of the evidence in a bench trial, a reviewing court must view the evidence in the light most favorable to the prosecution to determine whether there is sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt. *People v Legg*, 197 Mich App 131, 132; 494 NW2d 797 (1992). "A trier of fact may make reasonable inferences from the facts, if the inferences are supported by direct or circumstantial evidence." *Id.*

To establish an intent to deliver, actual delivery is not required. *People v Fetterley*, 229 Mich App 511, 517; 583 NW2d 199 (1998). A defendant's intent may be inferred from all of the facts and circumstances. *Id.* at 517-518. Because of the difficulty in proving a defendant's state of mind, minimal circumstantial evidence is sufficient. *Id.* at 518. Intent to deliver may be inferred from the quantity of the controlled substance in the defendant's possession, the way it is packaged, and from other circumstances surrounding the arrest. *Id.*; *People v Wolfe*, 440 Mich 508, 524; 489 NW2d 748, amended 441 Mich 1201 (1992).

In this case, the amount and packaging of each of the drugs, and the absence of any means of ingesting the substances personally, when viewed in a light most favorable to the prosecution, supports an inference of an intent to deliver. Thus, the evidence was sufficient to support defendant's convictions.

We also conclude that the trial court's factual findings were sufficient because it is apparent that the court was aware of the issues in the case and correctly applied the law. Further explication would not facilitate appellate review. *Legg, supra* at 134-135.

Affirmed.

/s/ Harold Hood
/s/ Hilda R. Gage
/s/ Christopher M. Murray